IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 16.12.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Appeal No.554 of 2002

1.The Government of Tamil Nadu,
rep., by its Secretary,
Department of Forest & Environment,
Fort St. George,
Chennai-600 009.

2.The District Forest Officer,
Coimbatore. ... Appellants/Respondents

Vs.

M.Durairaj .. Respondent /Petitioner

Writ appeal filed under Clause 15 of the Letters Patent against the order dated 10.12.2001 made in W.P.No.23094 of 2001.

WP NO. 23094/2000:

This Petition filed under Article 226 of Constitution of India to issue a Writ of mandamus directing the respondents to release the lorry bearing Regn.No. T.N.-45D-7677 in good condition or to pay the Cost of the Vehicle of Rs.6.00 lakhs to the petitioner together with the monetary loss suffered by the petitioner due to non-release of the vehicle after 23.12.1999 estimated at Rs.500/- per day.

For Appellant : Mr.Titus Jesudoss,
Special Government Pleader(Forests)

For respondent : Mr.Vijayanarayanan, SC., for
Mr.S.M.Edward Stanley

JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

Aggrieved by the order of the learned single Judge dated 10.12.2002 made in W.P.No.23094 of 2001, the Secretary, Government

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of Tamil Nadu, Department of Forest and Environment, Fort St. George, Chennai, has preferred the above appeal.

2. The respondent-writ petitioner filed Writ Petition No.23094 of 2001 seeking to issue a Writ of Mandamus directing the respondents therein to release the lorry bearing registration No.TN-45D-7677 in good condition or to pay the cost of the vehicle of Rs.6 lakhs to the petitioner together with the monetary loss suffered by the petitioner due to non-release of the vehicle after 23.12.1999, estimated at Rs.500/- per day.

3. The learned single Judge, after finding that since the order of confiscation has already been set aside in Crl. Appeal No.64 of 1997 by the competent Court, the respondents ought to have returned the vehicle immediately, accepted the stand taken by the petitioner and directed the respondents to pay a sum of Rs.500/- per day to the petitioner from 24.12.1999 till the release of the lorry.

4. While taking up the appeal, the second appellant-District Forest Officer, Coimbatore Division, has filed an additional affidavit dated 29.06.2004, in and by which, it is stated that after passing an order of confiscation on 24.12.1996, the then District Forest Officer, in public interest and to prevent national waste, notified the lorry for public auction, which was conducted on 15.07.1999, wherein the vehicle had fetched Rs.1,19,000/- and the said lorry was also released to the highest bidder on 14.09.1999 itself. It is further stated that if in case the confiscation order is set aside either under Section 49-C or under Section 40-D, Section 49-A(b) provides for the release of the sale proceeds to the persons from whom it is seized after deducting the incidental expenses. It is further stated that even if the confiscation order is ultimately set aside by the Courts and if the vehicle is sold in auction, in the mean time, the vehicle owner is entitled to the sale proceeds as contemplated under Section 49-A(b) of the Act. The second appellant further stated that he has taken charge of the District Forest Officer, Coimbatore Division on 16.07.2001 and he came to know about the entire matter only after the order passed by the learned single Judge in W.P. No.23094 of 2002 dated 10.12.2001. According to him, he realised that the writ petition ought to have been filed within 30 days from the date of the order passed in Crl. Appeal No.64 of 1997. In view of the same, he ascertained that the writ petitions were filed only in the year 2002. Considering the subsequent development, which had taken place, it is stated that the second respondent is ready to pay a sum of Rs.1,13,050/- after deducting 5% towards the incidental expenses from out of the sale proceeds, to the first respondent. He also stated that he has already initiated disciplinary proceedings by issuing a charge sheet to the concerned Superintendent and the Junior Assistant even on 08.02.2002.

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5. We have heard Mr. Vijay Narayanan, learned Senior Counsel appearing for the respondent herein with reference to above information filed in the form of an additional affidavit. We have also verified all the earlier proceedings and the order passed.

6. It is useful to refer certain dates and events in order to appreciate the claim of the appellants as well as the respondent herein. On 25.10.1996, the driver Sabapathy took the vehicle for transporting the household things of one officer from BHEL to Bangalore. The Forest Officer alleged that the vehicle was seized due to transportation of the sandalwood without any valid permit, which was not known to the owner/petitioner/respondent herein and he has no knowledge about the said occurrence. The said incident occurred on 24.10.1996. Since the driver did not return to Trichy, after search, the owner filed the complaint to the Superintendent of Police, Trichy on 15.11.1996. The said petition was transferred for further investigation. At the time of interrogation,, another driver Raju divulged that the vehicle was seized by the District Forest Officer, Coimbatore. Thereafter, the petitioner approached the District Forest Officer, Coimbatore on 16.12.1996. The confiscation order was passed by DFO/authorised officer on 24.12.1996 and the same was signed on 30.12.1996. It is stated that the confiscation order was served to the petitioner's wife on 07.01.1997. The petitioner has filed the writ petition before this Court on 21.01.1997 and direction was issued in W.P. No.343 of 1997 to release the vehicle if the same had been confiscated already and this order shall not be of any avail to the petitioner. On 07.02.1997, an appeal was filed before the II Additional Sessions Judge, Coimbatore, in C.A.No.64 of 1997. Notice was ordered to the District Forest Officer, Coimbatore on 22.04.1997. It is also brought to our notice that on 14.05.1997, the very same Officer viz., R.K.Bharathi wrote a letter to the Regional Transport Officer, Trichy, seeking exemption to pay the tax in respect of the seized vehicle because the Criminal Appeal was pending before the Sessions Court, Coimbatore. It is pointed out that the above letter amply shows that he had knowledge about the pendency of the criminal appeal and he was fully aware of the same. On 10.06.1997, notice had been ordered for the appearance of DFO, Coimbatore. On 10.12.1999 Mr.N.Manickam, Additional Public Prosecutor appeared and argued the Criminal Appeal in the final hearing on behalf of the State. Finally on 23.12.1999, the confiscation order was set aside by the Sessions Judge in C.A.No.64/97. Based on the same, on 24.12.1999, the petitioner approached the District Forest Officer viz., V.Ravindran to release the vehicle. But he never released the vehicle. There was no response from the DFO. On 28.07.2000, the learned counsel for the petitioner sent a legal notice along with xerox copy of the judgment in Crl.A.No.64/97 to DFO Ravindran. The said legal notice and the copy of the judgment have been received by the DFO on 31.07.2000. It is also pointed out that till 22.11.2001, there was no response from

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the DFO viz., Ravindran or other officials in the office of the DFO, Coimbatore. Thereafter, the petitioner has filed Writ Petition No.23094 of 2001. This Court has ordered notice in the writ petition on 26.11.2001. On 03.12.2001 in WPMP No.33995 of 2001, interim direction was issued for release of the vehicle. Finally, on 10.12.2001, W.P. No.23094 of 2001 was allowed with the compensation of Rs.500/- per day till the release of the vehicle. Against the said order, the authorised Department has filed the present writ appeal on 08.03.2002. It is pointed out that on receipt of the copy of the typed set of papers, the petitioner came to know that the said vehicle was sold in the public auction held on 15.07.1999 by DFO Ravindran. It is further pointed out that from 24.12.1999 to 07.03.2002, neither the Government nor the District Forest Officer ever disclosed the said auction before this Court or to the petitioner. Only on 11.03.2002, the writ petition was filed against the Judgment in Crl.A.No.64/97 before this Court and till this date, the Department has not taken effective steps to get the writ petition numbered. However, by order dated 22.04.2003, W.P.S.R.Nos.35229 and 35231 of 2002 were directed to be posted along with W.A.No.554 of 2002.

7. In view of our conclusion in the writ appeal and the fact that no effective steps have been taken to number the writ petition and the connected stay petition viz., W.P.SR.No.35339 and 35231 of 2002, they are rejected.

8. The above factual details furnished by the respondent herein-writ petitioner clearly show that the auction and the sale of the vehicle was not brought to the notice of the writ petitioner and no proper follow-up order was passed consequent to the order of the Sessions Judge in Crl.A.No.64/97. When the confiscation order was set aside by the competent Court, it is for the authority concerned to hand over the vehicle, and in the absence of vehicle, the authority/Department has to challenge the order in the manner known to law. They ought to have filed the appropriate petition before the appropriate Court. As pointed out earlier, the writ petition and the stay petition came to be filed only on 11.03.2002 and it is unfortunate that even till this date, the Department is not in a position to number the same. In such circumstances, we are unable to accept that the appellants, particularly, the office of the District Forest, Coimbatore are not aware of these events. Atleast, after the order of the learned single Judge dated 10.12.2001 in W.P.No.23094/2001, the concerned officer/officers could have taken steps in depositing the amount in order to avoid further loss to the State Exchequer or at least after filing the appeal, they could have obtained permission for depositing the amount as ordered by the learned single Judge without prejudice to their stand in the appeal. No such recourse has been followed by the Department or the officer concerned.

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9. In such circumstances, we are of the view that the order of the learned single Judge cannot be faulted with and the compensation at the rate of Rs.500/- per day cannot said to be either unreasonable or improper. However, the Mr. Vijay Narayan, learned Senior Counsel appearing for the respondent-writ petitioner fairly submitted that the petitioner is very much interested for the actual value of the vehicle viz., Rs.5,63,000/- and if direction is issued for payment of the said amount, that would satisfy ends of justice. On the facts and circumstances mentioned above, we agree with the fair suggestion made by the learned Senior Counsel, though the writ petitioner is entitled to a larger amount if we calculate it on the basis of the order of the learned single Judge dated 10.12.2001. Therefore, in modification of the order dated 10.12.2001, we direct the appellants to pay a sum of Rs.5,63,000/- to the respondent/writ petitioner viz., N.Durairaj, Vadagu Street, Ammapet Village, Annakudi Post, Thiruvidaimaruthur Taluk, Tanjavur District, within a period of 12 weeks from the date of receipt of a copy of this order.

10. The writ appeal is disposed of on the above terms. No costs.

raa

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1.The Secretary,
Government of Tamil Nadu,
Department of Forest & Environment,
Fort St. George,
Chennai-600 009.

2.The District Forest Officer,
Coimbatore.

ONE CC TO MR.S.M.Edward Stanley, ADvocate sr no 63044

one cc to the spl. G.P. (Forests) sr no 63039

W.A.No.554 of 2002

ms(co)

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